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(25,143)

SUPREME COURT OF THE UNITED STATES

October Term, 1915.

No. 860.

CLARENCE C. CALDWELL, as Attorney General for the State of South Dakota, and Ex-Officio Member of the State Securities Commission of the State of South Dakota, et al,

Appellants.

vs.

THE SIOUX FALLS STOCK YARDS COMPANY, WILLIAM MORLEY, and HARRY MORLEY, *Appellees.*

BRIEF FOR APPELLANTS.

This action was brought by plaintiffs and appellants in the United States District Court for the District of South Dakota for the purpose of obtaining a permanent injunction against the appellants restraining said appellants from instituting criminal actions against appellees for violation of Chapter 275, of the Session Laws of the State of South Dakota for the year 1915 and interfering with their rights in making sales of the stock of the Sioux Falls Stock Yards Company. An application was made by appellees to the Judge of said Court for a temporary or interlocutory injunction during the pendency of said action. A hearing was had upon the application of appellees for such interlocutory injunction under the provisions of Section 266, of the Act of Congress entitled "An act to codify, revise and "amend the laws relating to the Judiciary," approved March 3, 1911, as amended by Act of March 4, 1913. (37 Stat. L. 1013). The Judge of the District Court called to his assistance to hear and determine the application, two other Judges, as provided by said statute, namely, United States Circuit Court Judge Walter H. Sanborn, and United

States District Judge Thos. C. Munger, and an order was made in said cause by the said Judges, which granted the application of appellees for an interlocutory injunction, and which restrained appellants from instituting and prosecuting any actions, civil or criminal, against appellees under the aforesaid act of the Legislature of the State of South Dakota, for alleged violations thereof, and from taking any proceedings for the enforcement of said act, against the said appellees. From this interlocutory order of injunction appellants have appealed to the Supreme Court of the United States.

STATEMENT OF THE CASE.

The South Dakota Act brought into question (Chapter 275, Session Laws of 1915) is popularly known as a Blue Sky Law. It was passed at the 1915 session of the Legislature of South Dakota, was approved March 15, 1915, and went into effect on July 1st, 1915. This act creates "A "State Securities Comimssion" to consist of the Public Examiner, the Attorney General and Commissioner of Insurance. It defines an investment company for the purposes of the Act to be "every person, corporation, co-partnership, company or association (except those exempt under the provisions of this act) organized or thereafter organized in this state, or resident of or organized in any other state, territory, or government which shall either himself, themselves or itself, or by or through others, *engage in the business* of selling or negotiating for the sale of any stocks, bonds, investment contracts or other securities issued by him, them or it, *within the state of South Dakota.*"

There is exempted from the provisions of the Act:

(a) Securities of the United States; or any foreign government or of any State or territory thereof, or of any county, city, township, district or other public taxing subdivision of any State or territory of the United States, or any foreign government. (b) Unsecured commercial paper; (c) Securities of public or quasi public corporations, the issue of which securities are regulated by the South Dakota Railroad Commission or by a public service commission or board of equal authority of any state or territory of the United States or securities senior thereto. (d) Securities of State or National Banks or Trust Companies, or building and loan associations of this State. (e) Securities of any domestic corporation organized without capital stock and not

for pecuniary gain, or exclusively for educational, benevolent, charitable or reformatory purposes. (f) Mortgages upon real and personal property situated within this State where the entire mortgage is sold and transferred with the note or notes secured by such mortgages. (g) Increase of stock sold and issued to stockholders, also stock dividends. (h) Securities which are listed in any Standard Manual of Information approved by said Commission. (i) Isolated or single transactions.

An investment company (Secs. 4 and 6 of Act) or dealer in the stocks, bonds or securities of an investment company (Sec. 10 of Act.) before selling, offering for sale, taking subscription for, or negotiating for the sale of such securities in the State of South Dakota, must make application for a permit, and submit certain information and data prescribed by the statute to the said State Securities Commission and pay a filing fee prescribed by the statute. The said State Securities Commission shall hear such application, and if in the opinion of such Commission such contracts, stocks, bonds or other securities are fraudulent, or are of such a nature that their sale would work a fraud upon the purchaser, the Commission is authorized to disapprove the sale of same. If, however, said Commission shall not find that the proposed plan of business, or the proposed contracts, stocks, bonds or other securities are fraudulent, or are of such a nature that the sale of such contracts, stocks, bonds or other securities would in the opinion of the Commission work a fraud upon the purchaser thereof, then it is authorized to approve the sale of the same in the State of South Dakota, and issue its certificate to that effect. It is made unlawful for any investment company or dealer or representative thereof, to sell, take subscriptions for or negotiate for the sale in any manner whatever in South Dakota, any stocks, bonds, investment contracts or other securities, unless and until the said Commission has approved thereof and issued its certificates in accordance with the provisions of the state. Penalties by fine and imprisonment in the county jail are prescribed for violations of the act.

Appellees Bill of Complaint and Application shows that the complainant, the Sioux Falls Stock Yards Company, is a corporation of the state of Colorado, and that the complainants, William Morley and Harry Morley, are residents and citizens of the State of Iowa. That during the year

1915, both before and after July 1st, of that year, the Sioux Falls Stock Yards Company was engaged in the business of building and constructing a stock yards in the City of Sioux Falls, Minnehaha county, South Dakota, and was engaged at such time in selling certain of its capital stock for the purpose of raising sufficient capital to complete the construction of its said stock yards in the City of Sioux Falls. That the complainants, William Morley and Harry Morley were at such times engaged in the business of selling the stock of the Sioux Falls Stock Yards Company within the state of South Dakota. That in October, 1915, the defendant, Dan E. Hanson, as State's Attorney of the County of Turner, and State of South Dakota, at the instigation and request of the other defendants as members of the State Securities Commission, caused to be instituted against the complainants criminal proceedings for the selling of the capital stock of the complaining corporation without having complied with the provisions of said Chapter 275, Session Laws of South Dakota for the year 1915, and that the defendants intend and will continue to prosecute the complainants for such violations of said statute so long as complainants sell or offer for sale any stock of the Sioux Falls Stock Yards Company within the state of South Dakota. That the complainants desire to continue the sale of the securities and stocks of the said Sioux Falls Stock Yards Company within the State of South Dakota, and that the business of said corporation cannot be promoted without the continued sale of its stock. That the acts of defendants under said chapter 275 are depriving complainants of the right to sell the capital stock of said Sioux Falls Stock Yards Company within the State of South Dakota, and deprives them of their property without due process of law in violation of Section 1 of Article 14 of the Constitution of the United States and Section 2 of Article 6, Constitution of the State of South Dakota; that there is thereby denied to the complainants the equal protection of the laws as guaranteed to them by the Fourteenth amendment to the Federal Constitution; that the law imposes a burden upon and practically prohibits interstate commerce, contrary to section 8 of Article 1, of the Constitution of the United States, and said statutes attempt to vest and delegate to the said State Securities Commissions judicial powers unauthorized by law.

The hearing for the interlocutory injunction was had upon the Bill of Complaint, which constituted the showing and

application for the complainants. Appellants moved that the application of appellees for such interlocutory injunction be denied, and the temporary restraining order of the court pending the hearing be vacated and set aside, thus in effect demurring to the application of appellees. The Court rendered no formal opinion but in the interlocutory injunction order, made a finding that Chapter 275, Session Laws of South Dakota for the year 1915, was violative of the Constitution of the United States, basing such finding in the order upon the decisions in Alabama & No. Transportation Co. vs. Doyle, 210 Fed. 173, Wm. R. Compton Co. vs. Allen et al., 216 Federal 537, and Bracey vs. Darst, 218 Federal 482. Such interlocutory injunction enjoined appellants from instituting and prosecuting any actions, civil or criminal against appellees under the aforesaid act of the Legislature of the State of South Dakota, for alleged violations thereof, and from taking any proceedings for the enforcement of said act against the appellees, except such proceedings as may be deemed proper by them in the criminal actions already pending against the appellants. From such interlocutory injunction, appeal has been taken to this Court.

APPELLANTS' SPECIFICATIONS OF ERROR.

Appellants filed with their petition for appeal an assignment of errors, and same has been printed as part of the transcript of the record. (p. 34, 35). Appellants now specify as errors relied upon in this court the matters so assigned in this record, to-wit:

Appellants say that the Honorable District Court of the District of South Dakota erred in making the said interlocutory injunction order dated November 18th, 1915, (Tr. of Record, p. 33), in the following particulars, namely:

First.

In holding and deciding therein that Chapter 275 of the Session Laws of the State of South Dakota for the year 1915 is unconstitutional. (Assignment No. 1, Tr. of Record, p 35).

Second.

In denying appellant's motion that a temporary injunction restraining these appellants from enforcing chapter 275 of the Session Laws of South Dakota of 1915, against these appellees, be not issued, and, that the temporary restraining order theretofore issued be vacated and set aside. (Assignment No. 2, Tr. of Record, p. 35).

Third.

In issuing the temporary injunction restraining and enjoining these appellants, their agents, servants and assistants and all others to whom knowledge of the order might come from bringing or causing to be brought any further actions or prosecutions against appellants for any violations of said chapter 275 of the Session Laws of South Dakota of 1915. (Assignment No. 3, Tr. of Record p. 35).

ARGUMENT.

This case involves the validity of the 1915 South Dakota "Blue Sky Law." The avowed object of the statute is to prevent fraud being practiced upon the people of the State in the sale of stocks, bonds and other securities. Some twenty-six of the states of the Union a list of which is given in the appendix now have a blue sky law of some form. After the decisions in the cases of Alabama Co. vs. Doyle, 210 Fed. 173, and Compton vs. Allen, 216 Fed. 537, holding the blue sky statutes of Michigan and Iowa invalid respectively the National Association of Attorneys General at their annual meeting in October 1914, appointed a committee to draft and submit a new proposed blue sky law. This committee reported December 28th, 1914, with a draft of a new proposed law. In the meantime, after the appointment of the committee, but before its report, the decision in Bracey vs. Darst, 218 Fed. 482, holding invalid the West Virginia blue sky law, had been made, so the committee drafted the new proposed measure in the light of the attacks upon the constitutionality of the old statutes and having before them the views of the various courts that had been called upon to pass upon the validity of such statutes. The committee was composed of attorneys general who had had a part in this litigation. In its report of the new proposed law, the committee stated: "The committee has there-"fore framed a bill with the sole object of preventing fraud "in the sale of stocks, bonds and other securities, by requir-"ing inspection, and a sufficient amount of supervision to "accomplish this end."

The South Dakota law involved in this appeal was patterned after the proposed measure recommended by the committee of Attorneys General, with such slight changes as were needed to fit in with South Dakota institutions. A comparison of this with the earlier statutes involved in the Michigan, Iowa and West Virginia cases, supra, will show

radical changes in its form and provisions. These changes were recommended by the committee of Attorneys General and were incorporated in the South Dakota law with the design of removing the objections that the Federal Courts had found to the earlier blue sky statutes. Nevertheless the lower court in this action, without formal opinion, without discussing the changes that had been incorporated in the South Dakota statute to meet the objections of the courts to the earlier statutes, but basing its order upon the decisions upon the earlier statutes has held herein the South Dakota statute "violative of the Constitution of the United States."

Likewise Michigan in 1915, revised its blue sky law in accordance with the recommendation of the committee of Attorneys General. This law came before the Federal District Court for review in Halsey vs. Merrick, 228 Fed. 805. The court in its opinion reviews some of the changes made by the 1915 law, but concludes no real change from the 1913 law had been accomplished, and that the law still impresses upon interstate commerce a burden which is direct and beyond the limits of the police power of the state.

A review of the decisions of the Federal District Courts upon the various "blue sky laws" would seem to indicate that the principal constitutional objection to such laws is that it violates the commerce clause of the Federal constitution. The latest decision relating to the Michigan law (Halsey vs. Merrick, supra) finds the law invalid on that ground alone. It would seem that other constitutional objections urged against the earlier laws had been eliminated by their revision. However respondents have raised other questions in the case relating to the revised South Dakota law, and the Court does not specify the ground of its decision. We shall consider these objections first, and together.

Due Process of Law, Equal Protection of the Laws, Delegation of Judicial Power.

Appellees urged in their bill of complaint that the statute in question denied them the equal protection of the laws; that it deprived them of their property without due process of law, and that the statute unlawfully attempts to confer judicial power upon an administrative board.

All persons and classes of persions, residents and nonresidents, natural persons, associations, and corporations are treated alike by the statute. We see no basis for any claim

on the part of respondents that they are denied by the statute the equal protection of the laws.

As to the contention regarding "due process of law" we find at section 1 of the act that regular monthly meetings of the Commission are required, and it is provided that special meetings may be called at any time by the president. At section 7 of the act it is provided that if an application is considered by the Commission at a special or adjourned meeting thereof, two days notice of the hearing shall be given to the applicant. It is provided at section 22 of the act that the Supreme Court of the state may by certiorari review the proceedings of the Commission. In view of these provisions the appellants contend that even if it should be held that the refusal of the Commission to issue a license to sell stock to these plaintiffs would be depriving them of their property, that it would not follow that the plaintiffs were being deprived of such property "without due process of law." The plaintiffs have had a hearing, or could have had a hearing had they desired, before a board constituted for that purpose. If the Board had exceeded or should exceed its jurisdiction the error could be corrected by the supreme court.

The words "due process of law" do not necessarily imply judicial action. Private rights and the enjoyment of property may be interfered with by the legislative and executive as well as the judicial department of government.

Reetz vs. Michigan, 188 U. S. 505.

Davidson vs. City of Orleans, 96 U. S. 97, 24 L. Ed. 616.

Palmer vs. McMahon, 133 U. S. 660, 33 L. Ed. 772, 10 Sup. Ct. 324.

Baltimore Belt R. Co. v. Baltzell, 75 Md. 94, 23 Atl. 74.

In re Ross 38 La. Ann. 523.

Eames vs. Savage, 77 Me. 212, 52. Am. Rep. 751.

State vs. State Board of Med. Examiners, 34 Minn. 387, 26 N. W. 123.

Weimer vs. Bunbury, 30 Mich. 201.

Gilchrist vs. Schmedling, 12 Kan. 263.

Ry. Comrs. vs. Ry. Co., 82 S. C. 418.

Wadley So. Ry. Co. vs. State, 137 Ga. 497.

St. Louis etc. Ry. Co. vs. State, 136 S. W. 438.

Spurr vs. Travis, 145 Mich. 721.

Union Central Life Ins. Co., vs. Chowning, 86 Tex.

654, 26 S. W. 982, 24 L. R. A. 504.

Id 8 Tex App. 455, 28 S. W. 117.

Anderson vs. Ritterbush, 22 Okl. 761, 98 Pac. 1002.

Meffert vs. State Bd. of Med. etc., 66 Kan. 710, 72 Pac. 247, 1 L. R. A. (N. S.) 811.

In Reetz vs. Michigan, 188 U. S. 505, which was a prosecution for practicing medicine without obtaining a license from the state board as required by the state law, the United States Supreme Court said: "It is objected in the present case that the board of registration is given authority to exercise judicial powers without any appeal from its decision, inasmuch as it may refuse a certificate of registration if it shall find that no sufficient proof is presented that the applicant has been "legally registered under act No. 167 of "1883." That, it is contended is the determination of a legal question which no tribunal other than a regularly organized court can be empowered to decide. The decision of the state supreme court is conclusive that the act does not conflict with the state Constitution, and we know of no provision in the Federal Constitution which forbids a state from granting to a tribunal, whether called a court or a board of registration, the final determination of a legal question. Indeed, it not infrequently happens that a full discharge of their duties compels boards, or officers of a purely ministerial character, to consider and determine questions of a legal nature. Due process is not necessarily judicial process.

Here the statute provides for notice and an opportunity to be heard, and even provides for a review by a regular judicial tribunal. All of the essentials of a regular proceeding have been provided for the determination of an administrative question.

Ballard vs. Hunter, 204 U. S. 241, 27 Sup. Ct. 261, 51 L. Ed. 461.

It may be conceded that the legislature could not make a court of the Securities Commission and confer upon them strictly judicial functions. But the statute does not do this. It makes it an administrative board vested with discretionary powers, sometimes denominated quasi-judicial, to determine the questions necessarily incident to its administrative duties. As was stated in the opinion in Conover vs. Galton, 251 Ill. 587, 96 N. E. 522, "Executive officers are "frequently under the necessity of determining facts from "evidence or their own knowledge and of deciding and act-"ing in accordance with such finding. The acts of clerks,

"sheriff and constables in taking and approving bonds of "assessors and boards of review in valuing property for "taxation, of city councils in granting or revoking licenses "to keep dramshops or to conduct business of various kinds, "of superintendent of schools in granting and revoking "teachers' certificates of the State Board of Health in ascer- "taining and determining qualifications of physicians to "practice medicine and in granting and revoking permits "for that purpose, of boards of supervisors in removing "county officers, are all based upon the judgment of the re- "spective officers, require the exercise of discretion and are "in their nature judicial. The power exercised is not how- "ever, that belonging to the judicial department of the gov- "ernment but is incidental only to the executive or adminis- "trative powers conferred by law upon such officers."

Other authorities along the same line are:

Reetz vs. Michigan, supra.

Tyson vs. Washington County, 110 N. W. 634.

Klafter vs. State Board, 259 Ill. 15, 46 L. R. A. (N. S.) 532.

Mo. etc. Ry. Co. vs. Shannon, 100 S. W. 138, 10 L. R. A. (N. S.) 68.

Territory of Dakota vs. Cox, 6 Dak. 501.

Graften vs. St. Paul etc. Ry. Co. 16 N. D. 313, 113 N. W. 598, 22 L. R. A. (N. S.) 1.

The Commerce Clause.

As we have seen, the principal objection found by the courts, and the one, which we anticipate will be most strongly relied upon here, is that the statute in question constitutes an unwarranted burden upon interstate commerce. Appellants position upon this question may be summed up in two propositions, namely, first, that no interstate commerce transaction is involved in this cause; and second, that assuming an interstate commerce transaction is involved, the statute is valid as an inspection law.

FIRST PROPOSITION.

It is the contention of appellants that no interstate commerce transaction is involved. The opinions by the several Federal District Courts that have passed upon Blue Sky Laws have discussed at length the question whether stocks, bonds and securities are "subjects of interstate commerce." In Alabama, etc. Company vs. Doyle, 210 Fed. 173, the Court concludes upon the authority of the Louisiana Lottery cases (188 U. S. 321, 23 Sup. Crt. 321, 47 L. Ed. 492) that

bonds and commercial paper, and probably stocks are the subject of interstate commerce. The later cases in 216 Fed., 218 Fed. and 228 Fed. follow the Doyle case.

The lottery cases in 188 U. S. referred to above involved an act of Congress which made it a criminal offense to transport by mail or other common carrier from one state to another any lottery ticket. The question before the Court was whether the power given Congress to regulate interstate commerce sustained this statute. The Court, four justices dissenting, held that the act of Congress was valid under the commerce clause of the Constitution. The Court in the majority opinion stated as to the scope of that decision as follows:

"We decide nothing more in the present case than that "lottery tickets are subjects of traffic among those who "choose to sell or buy them; that the carriage of such tick- "ets by independent carriers from one state to another is "therefore interstate commerce."

The Court further says in the opinion with respect to the scope of its decision as follows:

"It (the act of Congress) has not assumed to interfere "with the completely internal affairs of any state, and has "only legislated in respect of a matter which concerns the "people of the United States. As a state may, for the pur- "pose of guarding the morals of its own people, forbid all "sales of lottery tickets within its limits, so Congress, for "the purpose of guarding the people of the United States "against the 'wide spread pestilence of lotteries' and to "protect commerce which concerns all of the state may pro- "hibit the carrying of lottery tickets from one state to "another."

In the minority opinion by Chief Justice Fuller, it was contended vigorously that since lottery tickets were mere evidences of contractual relations, and had in themselves no value, they should not be considered subjects of interstate commerce, upon which Congress should legislate at all.

In Nathan vs. Louisiana the power of the state of Louisiana to impose an occupation tax on a money and exchange broker dealing in foreign bill of exchange, was upheld. The business of the broker was limited to foreign bills of exchange. He issued the bill of exchange, took his customer's money for it and delivered the bill to the customer to be transmitted to the drawee in a foreign state. The bill of exchange was thus transmitted from one state to another

and the court conceded that the bill might thus be an instrument of interstate commerce. But the court said:

"A bill of exchange is neither an export nor an import, it "is not transmitted through the ordinary channels of com- "merce but through the mail. The individual who uses his "money and credits in buying and selling bills of exchange, "and who thereby realizes a profit, may be taxed by a state in "proportion to his income as other persons are taxed, or in "the form of a license. He is not engaged in commerce but "in supplying an instrument of commerce. He is less con- "nected with it than the ship builder without whose labor "commerce could not be carried on."

The issuing of a policy of insurance is another example. It is safe to say that the greater part of the insurance business of the country is done by companies outside the state of their domicile or residence. Necessarily in such cases the insurance contracts must be transported from the state where the company is located to the state where the contract is sold. The United States Supreme Court has repeatedly refused to hold that this makes the business of insurance interstate commerce.

Paul vs. Virginia, 8 Wall. 168, 19 L. Ed. 357.

Hooper vs. California, 155 U. S. 648, 39 L. Ed. 297, 5 Inters. Com. Rep. 610, 15 Sup. Ct. Rep. 207.

New York L. Ins. Co. vs. Cravens, 178 U. S. 389, 44 L. Ed. 1, 116, 20 Sup. Ct. Rep. 962.

New York L. Ins. Co. vs. Deer Lodge Co., 231 U. S. 495, 34 Sup. Ct. Rep. 167, 58 L. Ed. 332.

In Paul vs. Virginia, supra, the court speaking through Mr. Justice Field said:

"Issuing a policy of insurance is not a transaction of "commerce. The policies are simply contracts of indemnity "against loss by fire, entered into between the corporation "and the assured, for a consideration paid by the latter. "These contracts are not articles of commerce in any pro- "per meaning of the word. They are not subjects of trade "and barter, offered in the market as something having an "existence and value independently of the parties to them. "They are not commodities to be shipped or forwarded from "one state to another, and then put up for sale. They are "like other personal contracts between parties which are "completed by their signature and the transfer of the con- "sideration. Such contracts are not interstate transactions, "though the parties may be domiciled in different states.

"The policies do not take effect—are not executed contracts "—until delivered by the agent in Virginia. They are, then, "local transactions, and are governed by the local law. They "do not constitute a part of the commerce between the states "any more than a contract for the purchase and sale of "goods in Virginia by a citizen of New York, whilst in Vir-"ginia would constitute a portion of such commerce."

In the recent case of New York Life Insurance Company vs. Deer Lodge County, supra, the question was again before this court. The court said that it regarded the matter as settled by the long line of decisions starting with the case of Paul vs. Virginia, supra, but reviewed the matter again at length. The view is adhered to that a policy of insurance is a personal contract, and the issuing of a policy of insurance is not a transaction of commerce.

The United States Supreme Court has further said that the business of a manufacturing company carried on within a state, although the manufactured product is sold by the company in other states and in foreign countries, is not interstate commerce.

Kidd vs. Pierson, 128 U. S. 1, 32 L. Ed 246.

U. S. vs. Knight Co., 156 U. S. 1, 39 L. Ed. 325.

The Court in Kidd vs. Pierson, supra, said: "If it be held "that the term (commerce) includes the regulation of all "such manufactures as are intended to be the subject of "commercial transactions in the future, it is impossible to "deny that it would also include all productive industries "that contemplate the same thing. The result would be that "Congress would be invested to the exclusion of the states "with the power to regulate not only manufactures, but also "agriculture, horticulture, stock raising, domestic fisheries, "mining—in fact every branch of human industry. For is "there one of them that does not contemplate more or less "clearly an interstate or foreign market?"

From the two lines of decisions, that of Nathan vs. Louisiana, supra, and the cases relating to the business of insurance on the one hand, and the Lottery Cases on the other, we think it must be conceded that stocks and bonds and other securities governed by our Blue Sky Laws may be subjects of commerce. Likewise the transportation company which accepts insurance policies for transportation and sends them from place to place is surely engaged in commerce, and the insurance policy as so handled is the subject of commerce. Whether in a given case bills of exchange,

lottery tickets, stocks, bonds or other securities are or are not involved in interstate commerce, whether indeed they are subjects of commerce or not, will depend entirely upon the nature of the business that is done with these articles. Clearly we think if one is engaged in the business of transporting "by independent carriers from one state to another" as was said by the court in the Lottery Cases, stocks, bonds, or other securities, the securities are the subjects of commerce, the business of transporting them is interstate commerce, and the Congress of the United States would have the power to regulate such commerce. But from this it would not follow that the state under its police power would be denied all authority to interfere in any manner with the sale of such securities, for as above stated it was recognized in the Lottery Cases that the state could forbid the sale of the lottery tickets all together.

But are the stocks and bonds of a corporation created for example under the laws of Illinois the subjects of interstate commerce when these stocks and bonds are offered for sale, say in South Dakota, as the transaction is handled by the investment company? If the corporation in question though an Illinois corporation complies with the laws of South Dakota governing foreign corporations and becomes domiciled in South Dakota, its securities may be issued in South Dakota and therefore not transported from one state to another at all, and under such circumstances the securities could not be the subjects of interstate commerce. But would these securities be subjects of interstate commerce if issued in Illinois and sent to South Dakota. Would the person who thus offered such securities for sale be engaged in commerce or merely "supplying an instrument of commerce" as was said in Nathan vs. Louisiana? It will be admitted that securities will ordinarily be transmitted through the mails and not by independent carriers. The company to which our Blue Sky Laws apply is not engaged in transporting from state to state the securities which the comapny issues. The effect of the Lottery Case decision merely is that Congress would have the power to regulate the transportation of securities from one state to another. The transportation company would doubtless be engaged in interstate commerce, but the business of the company issuing the securities is very different. This company's business so far as we are concerned with it is the securing or borrowing of money upon the stocks and bonds issued. Our Blue Sky Laws aid direct-

ly at the sales of these stocks and bonds, and if they affect interstate commerce at all it is only incidental and indirect. A bond is a mere "promise to pay" and it is not different from a bill of exchange. A certificate of stock is a mere contract entitling the stock holder to certain rights, and is not different from an insurance policy. It is our belief that the company which issues a certificate of stock or a bond, like the exchange broker who issues a bill of exchange, is not engaged in commerce, but is merely "supplying an instrument of commerce." We think therefore, that it must be conceded that securities may be subjects of commerce, but we do believe that the person or comapny which issues these securities is engaged in commerce within the meaning of the constitution and the decisions of the supreme court.

In the recent case of State vs. Agey, by the North Carolina Supreme Court, 88 S. E. 726, involving the North Carolina Blue Sky Law, the question whether the sale in North Carolina of an obligation of a corporation of Tennessee, which obligation related to certain rights in real estate in Georgia, was a transaction of interstate commerce, was involved, and the Court held that there was no element of interstate commerce involved, upon the authority of Paul vs. Virginia, supra.

Other cases may be cited in which were involved contracts "incident to commerce, but not of themselves commerce."

Williams vs. Fears, 179 U. S. 270, 21 Sup. Ct. 128, 45 L. Ed. 186.

New York Ex Rel Hatch vs. Reardon, 204 U. S. 152, 27 Sup. Ct. 188, 51 L. Ed. 415.

Ware & Leland vs. Mobile Co., 209 U. S. 405, 28 Sup. Ct. 526, 52 L. E. 855.

Engel vs. O'Malley, 219 U. S. 128, 31 Sup. Ct. 190, 55 L. Ed. 128.

Rast. vs. Van Deman & Lewis Co., 37 Sup. Ct. 370.

The first four of the above cases are discussed in the opinion of the New York Life Insurance vs. Deer Lodge County case, supra. The case last cited was decided March 6th, 1916, and is one of the "Trading Stamp Cases." In the last case the court considered a situation "where a manufacturer "or shipper in a state other than Florida insert in the pack-"ages of his goods which he ships to Florida such coupons or "certificates which are taken from the packages by the ul-"timate purchaser or consumer in Florida and sent to some "company or agency in some state of the United States out-

"side of the State of Florida, other than the manufacturer "or shipper of the goods, to be redeemed or paid, and the "premium or proceeds thereof is returned by such company "or agency to the person in Florida who has sent such cou- "pon or certificate." A statute of Florida required a license from one offering trading stamps with sales of merchandise. This statute was attacked as being contrary to the commerce clause of the constitution. The court held that the statute operated upon local transactions, namely, sales to the consumers in Florida; and did not affect interstate commerce, although the stamps were shipped in originally from another state with the merchandise sold, and the premium was forwarded to the consumer from another state upon his surrender of the stamp.

In these various cases involving situations which are close to the line divididing interstate commerce transactions from intrastate, the effort of the court seems to have been to determine in each case whether the transaction was essentially local, or involved as an essential element commercial intercourse between states. In other words the test is found in the character of the transaction not in the subject matter involved. The South Dakota statute under consideration applies only to sales of stocks and securities within the state (id sec. 10). The sale itself is a local transaction. Moreover the effect of the sale is essentially local. It invests the purchaser with certain contractual rights and privileges connected with the issuer. The delivery of the evidences of such rights and privileges is a mere incident of the transaction, which takes place and is wholly completed within the state. The person selling such stocks and securities is not engaged in interstate commerce just as the emigrant agent considered in Williams vs. Fears, supra, was not so engaged; just as the solicitors for the sale of an insurance policy in a nonresident insurance company is not so engaged.

But assuming that the sale of stocks may in some transactions and under some circumstances become an interstate commerce transaction, it is the further contention of appellants, that no interstate commerce transactions is shown or involved in this action.

Appellees in their bill of complaint in the case, it is true, recite that the Sioux Falls Stock Yards Company is a Colorado corporation having its principal place of business in Denver in that state (Tr. p 2) but they further recite (id sec. 4) that said Company was engaged in the business of

constructing a stockyard in Sioux Falls, South Dakota, and engaged in selling its stock in South Dakota to complete the construction of such yards; and further (id. sec. 9) that said company had complied with the laws of said state in regard to foreign corporations and had been authorized to do business therein as a foreign corporation. There is nothing in the record to imply that a sale of the stock of the respondent company involved any transportation from another state of the certificates of stock except the bare allegation that the Company is a Colorado corporation. On the other hand there is the positive showing in the bill of complaint that said corporation was domiciled in this state and doing business herein. A sale even between parties of different states is not the test of interstate commerce. "All sales of sound "articles of commerce, which necessitates the transportation "of the goods sold from one state to another are interstate "commerce."

Butler Bros. Shoe Co. vs. United States Rubber Co., 156 Fed. 1, 84 C. C. A. 167.

But all sales between parties of different states are not interstate commerce.

Kent etc., vs. Tuttle, 20 Mont. 203, 50 Pac. 509.

Appellees have failed to show that the sales being made by them involved this vital element, viz: transportation from one state to another, which is necessary to fix its character as an interstate commerce transaction.

It may be that the stock certificates were issued within the State of South Dakota; or, it may be they were sold from the place of business of the respondent corporation within the state, or it may be that they were being offered for sale at retail, peddled within the state. In none of these cases would a sale thereof involve interstate commerce.

Ewert vs. Missouri, 156 U. S. 296, 39 L. Ed. 430, 15 Sup. Ct. Rep. 367.

American Harrow Co. vs. Shaffer, 68 Fed. 750.

Brown vs. Houston, 114 U. S. 622, 5 Sup. Ct. 1091.

Pittsburg & So. Coal Co. vs. Bates, 156 U. S. 577.

Chicago etc. Ry. Co. vs. Iowa, 233 U. S. 334, 29 Sup. Ct. Rep. 592.

Appellees must affirmatively bring themselves within the class as to which the law is invalid. The rule is thus stated in New York Ex Rel Hatch vs. Reardon, supra, as follows:

"But there is a point beyond which this court does not con- "sider arguments of this sort for the purpose of invalidating

"the tax laws of a state on constitutional grounds. This "limit has been fixed in many cases. It is that unless the "party setting up the unconstitutionality of the state law "belongs to the class for whose sake the constitutional pro-"tection is given, or the class primarily protected, this court "does not listen to his objections, and will not go into imag-"inary cases, notwithstanding the seeming logic of the posi-"tion that it must do so, because if, for any reason, or as "against any class embraced, the law is unconstitutional, it "is void as to all. Albany County vs. Stanley, 105 U. S. 305, "311, 26 L. Ed. 1044, 1049; Clark vs. Kansas City, 176 "U. S. 114, 118, 44 L. Ed. 392, 396, 20 Sup. Ct. Rep. 284; "Lampasas vs. Bell, 180 U. S. 276, 283, 284, 45 L. Ed. 527, "530, 531, 21 Sup. Ct. Rep. 368; Cronin vs. Adams, 192 U. S. "108, 114, 48 L. Ed. 365, 368, 24 Sup. Ct. Rep. 219."

SECOND PROPOSITION.

Assuming that an interstate transaction in stocks is shown, appellants contend as a complete answer to the claim that the commerce clause of the United State Constitution is violated, that the South Dakota law is an inspection statute designed to safeguard the inhabitants of the state against fraud and imposition which is reasonable in its requirements, does not conflict with Federal regulations, is valid although it may affect interstate commerce indirectly or incidentally.

To sustain this proposition, appellants rely upon the following authorities:

Gibbons vs. Ogden, 9 Wheat. 203, 6 L. Ed. 71.

Turner vs. Maryland, 107 U. S. 38; 27 L. Ed. 370; 2 Sup. Ct. Rep. 44.

Plumley vs. Massachusetts, 155 U. S. 461; 39 L. Ed. 223, 15 Sup. Ct. Rep. 154.

Patapsco Guana Co. vs. Board of Agriculture, 171 U. S. 345, 357, 358; 43 L. Ed. 191, 195, 196; 18 Sup. Ct. Rep. 862.

Lemieux vs. Young, 211 U. S. 469.

Kidd et al vs. Musselman Co., 217 U. S. 458.

Savage vs. Jones, 225 U. S. 501; 56 L. Ed. 1182; 32 Sup. Ct. Rep. 715.

Minnesota Rate Cases, 230 U. S. 352, 33 Sup. Ct. Rep. 744.

The right of the state en enact reasonable inspection laws is expressly secured by clause 2 of section 10, of Article I

of the United States Constitution. This right exists notwithstanding the power to regulate commerce among the states is placed in Congress by the same instrument, and notwithstanding such inspection laws of the state may incidentally affect interstate commerce.

The above cited decisions recognize and re-affirm this right of the state. In Plumley vs. Mass. 155 U. S. 461, it was decided that a statute, "To prevent deception in the manner "and sale of imitation butter as applied to oleomargarine "artificially colored so as to look like yellow butter," was not in conflict with the commerce clause of the United States Constitution. The court uses this language, "this statute "seeks to suppress false pretenses and to promote fair dealing in the sale of an article of food. It compels the sale "of oleomargarine for what it really is, by preventing its "sale for what it is not. Can it be that the Constitution of "the United States secures to anyone the privilege of manufacturing and selling an article of food in such a manner "as to induce the mass of people to believe that they are "buying something which, in fact, is wholly different from "that which is offered for sale. Does the freedom of commerce among the states demand a recognition of the right "to practice a deception upon the public in the sale of any "articles, even those that may become the subject of trade "in different parts of the country? * * * Such legislation "may, indeed indirectly or incidentally affect trade in such "products transported from one state to another state. But "that circumstance does not show that laws of the character alluded to are inconsistent with the power of Congress to regulate commerce among the (Several states.)" That decision is based upon the fact that the state was to prevent a fraud upon the general public. The court held that the state had the power to protect its citizens from being cheated in making their purchases and that thereby the commerce clause was not interfered with.

In Patapsco Guano Company vs. North Carolina, 171 U. S. 345, it was held that commercial fertilizer was subject to state inspection law under the police power of the state, and a statute imposing such inspection was sustained. The court says: "Where the subject is of wide importance to the community, the consequences of fraudulent practices generally "injurious, and the suppression of such frauds matter of "public concern, it is within the protective power of the state "to intervene. * * * It is not perceived why the prevention

"of deception in the adulteration of fertilizers does not fall "within its scope."

In Savage vs. Jones, 225 U. S. 503, a statute of Indiana providing for an inspection of stock food was sustained. The statute authorized the state chemist to refuse registration of any stock food under a name which would be misleading as to the material of which it was made, and made it a criminal offense for any person to sell stock food in the State of Indiana without such registration. The Court says: "The evi- "dent purpose of the statute is to prevent fraud and im- "position in the sale of food for domestic animals,—a matter "of great importance to the people of the state. Its re- "quirements were directed to that end, and they were not "unreasonable. * * * It is not invalid because it may in- "cidentally affect interstate commerce, provided it does not "conflict with legislation enacted by Congress pursuant to "its constitutional authority."

In the Minnesota Rate cases, 230 U. S. 352, decided in 1913, Justice Hughes sums up the principle sustained by such line of authorities in the words: "State inspection laws "designed to safeguard the inhabitants of a state from fraud "and imposition are valid when reasonable in their require- "ments, and not in conflict with Federal rules. * * * They "may affect interstate commerce in their relation to articles "prepared for export, or by including incidentally those "brought into the state and held for sale in the original im- "ported package."

The principle is well settled. The difficulty is in determining whether the statute comes within the limits of the inspection power of the state as defined. It is evident that the mode of inspection must depend somewhat upon the character of the commodity inspected. Thus oil, flour, beer, and other common articles of merchandise would ordinarily be inspected by a personal visit of the inspector to the shipment and the examination of same or through samples taken. The Indiana statute relating to stock foods involved in Savage vs. Jones, supra, required dealers in commercial stock foods to file certain data relating to same with the State chemist before making sales, and was required to affix to every package sold a label furnished by the state chemist giving the purchaser like information. A similar scheme was employed to inspect commercial fertilizers by the North Carolina statute under consideration in Patapsco Guano Company vs. Board of Agriculture, supra.

In every case there is required some affirmative act on the part of both the dealer and the state before sales can be made. How shall an inspection of stocks, bonds and securities be made? As pieces of paper they have no value; they are purely representative in character. Manifestly a scheme of labeling to furnish information to the investing public would be impracticable. The scheme has been devised in the statute requiring such stocks, bonds and securities to be in effect registered with an administrative board, the State Securities Commission, who inspect same by reviewing the data furnished which determines whether they are in fact bonafide securities or fraudulent. The fraudulent securities are condemned, the bona fide securities are approved for sale to the public.

The scheme is not different in principle from an inspection of oil or other commodity. In that case the inspector takes a sample of the product, analyses it, and if it is found a bona fide product approves its sale. If it is deficient and fraudulent he rejects same and its sale is forbidden.

That the South Dakota act simply provides a scheme for the inspection of securities is fully warranted by the terms of the act.

Certain data is required to be filed with the Securities Commission by an investment company before selling its securities (Sec. 4 of Act). What is required may be summarized as follows: (a) A statement of the plan of business. (b) Copy of securities to be sold. (c) Copy of prospectus and advertising matter. (d) Location of offices. (e) Names of officers. (f) Statement of assets and liabilities. (g) Other information prescribed by Commission. (h) If a corporation, a copy of incorporation papers, by-laws, etc.

By section 9 of the Act, the Commission is required to examine the statements and documents filed and to disapprove the sale of the securities if it finds them fraudulent or that the sale would work a fraud upon the purchaser. Otherwise to approve their sale and issue permit therefor.

The foregoing briefly stated is the whole plan in the statute for the inspection of stocks and securities. It does not differ materially from the plan of inspection adopted by the states for many articles of trade, and such plan has been accepted for articles of interstate commerce as a proper exercise of the right of inspection by the state.

There is no valid objection to the general plan or scheme of the statute for inspecting stocks and securities, and cer-

tainly such general plan or scheme ought to receive the approval of this court in this action.

It may be conceded that no objections exist to the general plan in the statute for the inspection of stocks and securities, and still be contended that the details of administration included in the provisions of the statute constitute a direct burden upon interstate commerce beyond the limits of the police power of the state. In Halsey vs. Merrick, supa, the federal district Court found that an invalid burden was imposed, first, by reason of the delay in making inspections by "the Commission, stating that "approval would not, normal-"ly, be obtained for several days, and that it might be in-"definitely withheld, without objection made or reason given, "but at the mere convenience of the commission;" and second, because the test for the approval or disapproval of the sale of stocks and securities was not limited to the question of whether they were fraudulent or not. The court suggests further that the fees required, and expense of furnishing information and for examinations under the provisions of the law, amount to a practical prohibition of all small dealings and emphasize restrictions and burden placed by the law upon interstate commerce. Examination of the South Dakota law shows that it embraces the following details of administration.

(a) Applicant must furnish data and information. (Secs. 4, 5 and 6 of law.)

(b) Company must submit to an examination at expense of applicant, if required by commission (Secs. 8 and 13).

(d) Approval of Commission must be secured; test prescribed (Sec. 9).

Inspection of stocks and securities can only be made by a review of specific information as to the character and condition of the investment company issuing same. That information must be obtained by the Commission, in one of two ways: either this must be furnished to the commission or the commission must make an examination and secure the information for itself. Both ways seem to have been provided for in the law, but they are entirely independent provisions one of which might be eliminated without affecting the other or the remainder of the law.

That inspections should be made by the examination of information furnished the Commission seems to be the natural way. To be effective the Commission must be em-

powered to require full and accurate information. The provisions of section 4 of the law relating to data to be furnished go no further in their requirements than is necessary to provide for an effective inspection. These provisions should be upheld. The right of the commission to make an examination of the affairs of an investment company as provided by section 8 of the act as a condition for the approval of the sale of its stocks and securities, or to make such examination after the approval of such sale, both at the expense of the applicant, may raise a more serious question. It is true that the expense of such an examination is uncertain and would depend much upon the officer directing or making the examination. Such examination is only made in the discretion of the Securities Commission and would be required only in special cases. The purpose of the provision seems to be to afford an effective means for the Commission to determine the character of stocks or securities offered. The respondents in this action do not claim that the Securities Commission were attempting to impose any hardship upon them in the way of making an examination under the statute, or that the Securities Commission were threatening to require that an examination be made as a condition for granting them a permit. They are objecting to any inspection, and have asked the Court to enjoin the enforcement of all provisions of the Blue Sky Law.

Are the fees excessive? The amount prescribed is one-tenth of one per cent of the gross assets of the Investment Company, not exceeding $100 or less than $10.00. Thus a company with assets of $10,000 would pay a fee of $10.00, and one with $50,000 would pay a fee of $50.00 for inspection of its stocks and securities proposed to be sold. This does not seem like either exhorbitant or prohibitive. There is no showing that the fees prescribed realize more than the cost of inspection.

Is the requirement that the approval of the Commission be secured prohibitive? It is true the Commission holds only regular meetings monthly, but it holds special meetings on call of the president as its business requires. The Commission has a secretary who acts for the Commission, and when so acting has equal power and authority. (Sec. 1 of act.) There is no complaint made here by respondents of any hardship imposed upon them or others, or likely to be imposed by reason of having to wait for the approval of the

sale of the stocks in question. The respondents are objecting to any inspection by the state.

Is the test for approval improper and invalid? The language of the act is the same as the Michigan statute construed in Halsey vs. Merrick, supra, and provides for disapproval, if the Commission finds:

"That the proposed plan of business of said investment "company, or that its proposed contracts, stocks, bonds or "other securities are fraudulent, or are of such a nature "that the sale of such contracts, stocks, bonds or other se-"curities would, in the opinion of said Commission, work a "fraud upon the purchaser."

The Court in its opinion in the above case seems to recognize that the finding that the securities were fraudulent justified disapproval, but concluded that the latter part of the provision where the Commission were authorized to disapprove the sale of securities if in its opinion such sale would "work a fraud upon the purchaser" must be understood to mean simply "result in loss to the purchaser," and that to attempt to so regulate the sale of securities is beyond the power of the state. It is the view of appellants here that the Court in the Michigan case was unwarranted in its construction of the statute, even in connection with the other provisions of the Michigan statute. Fraud is based upon deception and misrepresentation. To work a fraud upon a person is to obtain an advantage by deception and misrepresentation. Securities, not in themselves fraudulent, might be sold in such a way by misrepresentation as to actually work a fraud upon the purchaser. Therefore the two expressions were used in the statute, the former referring to the character of the securities as being fraudulent, and the latter referring to the manner of their disposal as working a fraud upon the purchaser. It would appear that the test was in line with the recognized purpose of the statute to prevent fraud and deception in the sale of securities, and is the proper test to be used.

The Supreme Court of North Carolina has recently sustained the Blue Sky law of that state in the case of State vs. Agey, 88 N. E. 726, decided May 3rd, 1916. The court was not bothered with nice distinctions as to the test to be used. It recognized that the design of the North Carolina statute was to protect the people of the state from fraud and imposition, and held that to do this was an essential

duty as well as power of government. The court in its opinion says:

"The intent of the statute is to protect our people, under "the police power from fraud and imposition by irresponsi- "ble nonresident parties. These instances have been so fre- "quent that the United States Post Office Department has "estimated that the people of this country have been losing "annually more than $100,000,000 by speculative schemes "which have no more substantial basis than so many feet "of 'blue sky.'.

"To prevent such impositions on its people is an essen- "tial duty of government. If there is fraud and imposition "in a case of this kind the parties imposed on can rarely go "to Georgia and hunt up the guilty party, even if to be "found there, and undergo the expense incident thereto. "Even if this could be done, there would rarely be any assets "which could be applied to the demands of the plaintiff. "This state has sought to protect its people, not by forbid- "ding such transactions, but by the very reasonable require- "ment that when parties, whether incorporated or not, act- "ing under the authority, actual or merely asserted, of "another state, propose to do business in our borders, they "must submit their statement of assets, and the nature of "their business to the insurance commissioner of this state "who will issue his license to do business here when he 'is "satisfied that the company or corporation is safe and sol- 'vent and has complied with the laws of this state applicable "to fidelity companies and governing their admission and "supervision by the insurance department' and making it in- "dictable to transact such business in this state until such "license has been obtained. This is a reasonable require- "ment under the police power of this state."

The question is raised by the opinion in Alabama, etc. vs. Doyle, supra, as to whether stock and securities is a proper subject of inspection. It is argued that the dealing in stocks and securities is predominately private, that such transactions do not involve any public interest, or any public grant of sufferance, and the business of buying and selling stocks is no more affected with a public interest than the business of buying and selling groceries. We are constrained to agree with Judge Woods in his dissenting opinion in Bracey vs. Darst, supra, wherein he states that "What "business is affected with a public interest, and therefore "the proper subject of police regulation, is primarily a mat-

"ter for legislative determination (citing) Giozza vs. Tier-"man, 148 U. S. 657, Rippey vs. Texas, 193 U. S. 504."

As stated twenty-six of the different states of the Union have assumed to pass inspection laws affecting the sale of securities requiring that a license be issued after an examination before securities can be sold, and penalizing all sales of securities made without such inspection and license. The supreme court of the United States in Red C. Oil Manufacturing Company vs. Board of Agriculture, 222 U. S. 380, 56 L. Ed. 241, in answer to the contention that oil is not a proper subject of inspection said, "The conceded fact that "in thirty-five states of the Union oil inspection laws are in "force is sufficient to adversely dispose of the contention "named." If the fact that thirty-five states have passed oil inspection laws proves that oil is a proper subject for inspection, we believe that the fact that twenty-six states have passed securities inspection laws, should be sufficient evidence that securities need inspection. Opportunity for fraud in business has generally been recognized as a ground for the regulation of such business to prevent such fraud. It has sustained the regulation of even the business of selling groceries. He must be indeed unread and uninformed that has not been impressed with the great development in these later years of the business of selling stocks and securities. It is a part of the commercial growth of the country. Capital has been brought together in great complex organizations, and must need be so brought together in order to carry on industrial operations under present day conditions. Rapid transit and means of communication has facilitated the dealing in stocks and securities of such organizations of capital. Thus out of the commercial growth has sprung up a new business and vocation, stock selling and promoting. The means for fraud and imposition are peculiarly present. Rights or shares in great, complicated business organizations are being sold. The ordinary investor has little skill or means for investigating such organizations. He is not on equal footing with the unscrupulous promoter who paints in glowing colors the contemplated success of his proposed enterprise. He ought not to be allowed to prey upon the public undisturbed. There ought to be some way for an efficient government agency to inspect these articles of trade and fix upon and deny to the channels of commerce those that are fraudulent. The law ought to be progressive. Inspection of securities ought not to be condemned because

there are no precedents for such inspection. The principle that the state has power to protect its citizens against fraud ought to be extended to meet all new conditions, else law and government is indeed impotent.

Statute Declared Severable.

By section 24 of the South Dakota Act in question the legislature has declared that the various sections and provisions of the act shall be severable, so that if any one section or provision is declared unconstitutional or invalid, the remaining portion of the act shall not be affected. This is perhaps a legislative declaration of what would be already the rule of law. It is a legislative declaration of the need of a Blue Sky Law, and of a desire that the law shall not be declared invalid because some regulation or provision for the administration thereof cannot be sustained.

As heretofore stated and emphasized we believe the general plan of the law is good and should be sustained. Many of the details of adminstration do not affect the general plan and working of the law. If any of these should be found to be invalid this Court may so declare without suspending the whole law, and this should be done.

Conclusion.

The appellants in this case have been put in a position of being obliged to defend a statute against only general attacks upon its constitutionality. Necessarily they cannot anticipate every line of attack, and may perhaps have defended against attacks which will not be made by appellees. We have tried to emphasize the need of an efficient Blue Sky Law as seen from the struggle of so many states to secure such a law. The states have tried to profit by the decisions of the Federal Courts so far as they have indicated the limits of such legislation. It is hoped that this Court will further clarify the situation by its decision in this case and other cases involving similar statutes which are to be submitted at about the same time. We firmly believe that it should be established by these decisions that the principle of reasonable inspection may be applied by the states to transactions in stocks and securities.

Moreover, we believe that this precise case should be reversed. The appellees should not be relieved under the statute from an inspection of the stocks that they are attempting to sell. If any provisions of the law are invalid and should

not be enforced against appellees, at least only the enforcement of such invalid provisions should be enjoined. It should not be presumed that the officers of this state will enforce invalid and unconstitutional provisions of the law, and without an affirmative showing that the officers were threatening to enforce such invalid provisions (if there are any) in the law, injunction should not be granted. These considerations require either the entire reversal of the decree of the District Court or at least its substantial modification and we ask that this Court grant appellants this relief.

Respectfully submitted,

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APPENDIX.

States Having Blue Sky Laws.

The "Blue Sky Department" of the State of Kansas has furnished us with a list of twenty-six states having "Blue Sky Laws". We give the list below. We have also looked up and have given so far as we had access to the statutes of the several states the citations to such Blue Sky Laws. In a few instances we did not have access to the late statutes of the state.

Arizona
Arkansas
California, Chap. 353, laws 1913.
Connecticut, Chap. 293, laws 1911.
Florida, Chap. 6421, laws 1913.
Georgia, Laws 1913, No. 263.
Idaho, Chap. 117, laws 1913.
Iowa, House File No. 351, Session laws 1915.
Kansas, Chap. 133, laws 1911. Am. C. 141, 1913.
Louisiana.
Maine.
Michigan, P. A. Mich. 1915 No. 46.
Missouri, Act Approved April 7th, 1913.
Montana, Chap. 85, laws 1913.
Nebraska, Chap. 199, laws 1913.
North Carolino, Revisal Sec. 4805, and chap. 196, laws 1911, and chap. 156, laws 1913.
North Dakota, Chap. 109, laws 1913.
Ohio, 104 Ohio Laws, 110.
Oregon, Chap. 341, laws 1913.
South Carolina (?)
South Dakota, Chap. 275, laws 1915.
Tennessee, Chap. 31, laws 1913.
Texas, Chap 32, laws 1913.
Vermont, No. 170 Acts 1912.
West Virginia, Chap. 15, laws 1913.
Wisconsin, Chap 756, laws 1913.